

MCNAIR
ATTORNEYS

March 23, 2010

W. Marshall Taylor, Jr.

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VIA Hand Delivery

Mr. Craig V. Dukes
Brownfields/ Voluntary Cleanup Program
Bureau of Land and Waste Management
South Carolina Department of Health and
Environmental Control
2600 Bull Street
Columbia, South Carolina 29201

**Re: Voluntary Cleanup Contract, #10-5831-NRP
301 East Wood Street
Spartanburg County, South Carolina**

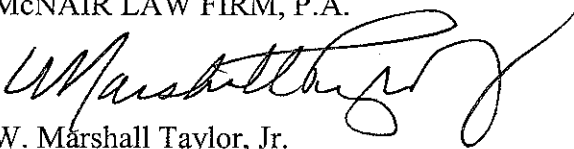
Dear Mr. Dukes:

Please find attached the original copy of the above-referenced Non Responsible Party Voluntary Clean-up Contract (VCC) signed by our client, 301 E. Wood Street, LLC.

We appreciate your consideration in this matter. Should you have any question or comment regarding the VCC, please do not hesitate to contact us.

Yours truly,

McNAIR LAW FIRM, P.A.



W. Marshall Taylor, Jr.

WMT:kcu

Enclosure

cc: (all via electronic mail)
T. Michael Kelley, CPM
Bradford J. Deaton, P.E.
Rhonda R. Tapley, Esq.
John Whitehead, PG

McNair Law Firm, P. A.
The Tower at 1301 Gervais
1301 Gervais Street, 11th Floor
Columbia, SC 29201

Mailing Address
Post Office Box 11390
Columbia, SC 29211

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**VOLUNTARY CLEANUP CONTRACT
10-5831-NRP**

**IN THE MATTER OF
301 East Wood Street, Spartanburg County
and
301 E. Wood Street, LLC**

This Contract is entered into by the South Carolina Department of Health and Environmental Control and 301 E. Wood Street, LLC, with respect to the Property located at 301 East Wood Street, Spartanburg, South Carolina. The Property includes approximately 0.85 acres identified by Tax Map Serial Number 7-08-14-026.00. In entering this Contract, the Department relies on the representations of the "Non Responsible Party Application for Voluntary Cleanup Contract" of February 8, 2010 by 301 E. Wood Street, LLC, which is incorporated into this Contract and attached as Appendix A.

AUTHORITY

This Contract is entered pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710 to 760, as amended on June 11, 2008; the South Carolina Hazardous Waste Management Act (HWMA), S.C. Code Ann. § 44-56-10, et. seq., and the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

DEFINITIONS

1. Unless otherwise expressly provided in this Contract, terms used in this Contract shall have the meaning assigned to them pursuant to the Brownfields/Voluntary Cleanup Program, S.C. Code § 44-56-710 to 760, as amended on June 11, 2008, and if not set forth therein, shall have the meaning assigned to them pursuant to the South Carolina Hazardous Waste Management Act, S.C. Code Ann. § 44-56-10, et. seq., the S.C. Pollution Control Act, S.C. Code Ann. § 48-1-10, et. seq., the S.C. State Underground Petroleum Environmental Response Bank Act, S. C. Code Ann. § 44-2-10, et. seq., or the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. §§ 9601, et seq.

- A. "301 EWS" means 301 E. Wood Street, LLC.
- B. "Beneficiaries" means 301 EWS's Non-Responsible Party lenders, parents, managers, members, employees, subsidiaries, and successors, including new purchasers, lessees, heirs, devisees, and other parties acquiring an interest in any portion of the Property, but only to the extent that such parties have never been a Responsible Party at the Site.
- C. "Contamination" means the presence of a contaminant, hazardous substance, petroleum, or petroleum product.
- D. "Contract" means this Voluntary Cleanup Contract.
- E. "Department" means the South Carolina Department of Health and Environmental Control, or a successor agency of the State of South Carolina that has responsibility for and jurisdiction over the subject matter of this Contract.
- F. "Existing Contamination" shall mean any Contamination including pollutants or contaminants, petroleum or petroleum products, or hazardous substances present on, or under, the Site as of the execution date of this Contract.
- G. "Property" means the real property as described in the Non Responsible Party Application for Voluntary Cleanup Contract attached as Appendix A, and that portion of the Site which is subject to the ownership, prospective ownership, or possessory or contractual interest of 301 EWS. The Property is bounded generally by East Wood and Cummings Streets to the northeast, East Pearl Street to the west, and commercial and office park property fronting on Pinewood Place to the south.
- H. "Segregated Sources" means drums, tanks, or similar discrete containers that

potentially hold substances that may cause Contamination upon release to the environment.

- I. "Waste Materials" means any contamination-causing solid, semi-solid, or liquid material discarded, buried, or otherwise present on the Property, and may include sludge, slag, or solid waste materials such as empty containers and demolition debris or materials containing asbestos, lead-based paint, or petroleum or other contaminants.

FINDINGS

2. Based on the information known by the Department, the following are asserted for this Contract:

- A. Owners and Operators: The historical owners and operators of the Property are as follows:

City of Spartanburg	Unknown to 1943
McCravys, Inc.	1943 - 1960
Wendell H. Tiller and John E. Keith	1960 - January 1969
Hammond Enterprises Inc.	January 1969 - April 1969
Hammond Development Corp.	April 1969 – December 1972
Sun Trust Bank (successor to Inman Federal Savings and Loan Association)	December 1972 - present

- B. Property and Surrounding Areas: The Property is an irregular shaped lot occupying the south corner of East Wood Street at East Pearl Street. There are no buildings on the Property. The center of the Property has a gravel area corresponding to the footprint where a small branch bank office was formerly located. The rest of the Property is mostly asphalt paved except for landscaped areas along the two roads and a strip of overgrowth along the remaining sides. The Property is mostly level with just a slight slope towards East Wood Street and Chiquapin Creek beyond to the north. The surrounding properties are commercial and medical offices.

C. Property History: The first known development of the Property was the construction of a bank building sometime between 1965 and 1970. A municipal garbage incinerator; operated by the City of Spartanburg, and the Old Spartanburg Dump (BLWM File # 57235) that existed on either side of Chinquapin Creek sometime prior to the Mid-1960's were located in proximity to the Property.

D. Investigations / Reports: A Phase I Environmental Site Assessment (S&ME, October 13, 2009) reported that the City of Spartanburg formerly operated its municipal garbage incinerators approximately 300 feet south of the Property. The years of operation for the incinerator were not reported in the Phase I.

Two direct-push groundwater samples were analyzed from the Property in a Phase II Environmental Site Assessment (S&ME, October 30, 2009). The samples were analyzed for volatile and semi-volatile compounds only. One sample detected 12 ppb of PCE (Perchloroethylene), which is above the MCL (Maximum Contaminant Level) of 5 ppb for PCE, and the other sample had no detections. Soil borings preparatory to collecting the groundwater samples reported the presence of fill material, including dirt interspersed with brick, glass and rubber, to depths of 8 and 15 feet.

E. Party Identification: 301 EWS is a South Carolina Limited Liability Company with its principal place of business located at 621 Jonestown Road, Winston Salem North Carolina. 301 EWS affirms that it has the financial resources to conduct the response action pursuant to this Contract.

F. Proposed Redevelopment: 301 EWS will acquire the Property and intends to construct a medical office/ urgent care facility.

BONA FIDE PROSPECTIVE PURCHASER STATUS

3. 301 EWS certifies that it and its members are Non-Responsible Parties at the Site and
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are eligible to be a Bona Fide Prospective Purchaser for the Property.

RESPONSE ACTION

4. 301 EWS agrees to implement a response action pursuant to a Work Plan prepared by 301 EWS, or its designee, and approved by the Department. The Work Plan shall be submitted by 301 EWS, or its designee, not later than thirty (30) days after the date of execution of this Contract by the Department, or later date if approved by the Department's project manager. 301 EWS acknowledges that the response actions may identify Contamination requiring additional assessment or corrective actions on the Property that cannot be anticipated with this Contract. 301 EWS agrees to perform reasonable response actions consistent with the intended uses of the Property under the purview of this Contract; however, 301 EWS may seek an amendment of this Contract to clarify its further responsibilities. 301 EWS shall perform all response actions required by this Contract, and any related actions of 301 EWS's choosing not expressly required by this Contract, pursuant to Work Plans and/or Addenda approved by the Department. The Work Plan shall set forth methods and schedules accomplishing the following tasks:

A. Work Plan Logistics:

- 1). All activities undertaken pursuant to this Contract shall be consistent with S.C. statutes and permitting requirements (e.g., stormwater management and waste disposal regulations). 301 EWS shall identify and obtain the applicable permits before beginning any action.
- 2). The Work Plan and all associated reports shall be in accordance with accepted industry standards and shall be signed and sealed by a Professional Engineer or Professional Geologist duly-licensed in South Carolina.
- 3). The Work Plan(s) shall provide sufficient information about the proposed sampling points, collection methods, analytical methods, and other pertinent details of the response actions.
 - a). Sample collection methodologies shall be consistent with the US EPA Region IV Field Branches Quality System and Technical Procedures.

- b). All monitoring wells and groundwater sampling points shall be constructed in accordance with the South Carolina Well Standards and Regulations, S.C. Code Ann. Regs. R.61- 71 ("Well Standard"). The Work Plan shall provide sufficient detail to support issuance of the well approvals by the Department.
 - c). The laboratory analyses for samples taken pursuant to the Work Plan are specified in the media-specific sub-paragraphs below, but may include: 1) the full EPA-TAL (Target Analyte List); 2) the full EPA-TCL (Target Compound List); 3) the TAL-Metals (EPA-TAL without Cyanide); 4) SVOCs (EPA-TCL Semi-Volatile Organics; 5) VOCs (EPA-TCL Volatile Organic Compounds);
 - d). All analytical methods shall use appropriate detection levels to allow comparison to the media-specific screening criteria listed in the "EPA Regional Screening Levels for Chemical Contaminants at Superfund Sites" in effect at the time of sampling. For soil samples, the applicable Protection of Groundwater SSL (Soil Screening Level) for a compound shall be the "MCL-Based SSL" if listed.
- 4). The Work Plan shall include the names, addresses, and telephone numbers of 301 EWS's consulting firm(s), analytical laboratories, and 301 EWS's contact person for matters relating to this Contract and the Work Plan.
 - a). The analytical laboratory shall possess applicable Certification, defined in S.C. Code Ann. Regs. R.61-81, for the test methods specified in the Work Plan.
 - b). 301 EWS shall notify the Department in writing of any changes concerning its consultant, contact persons or laboratory.
 - 5). The Department will notify 301 EWS in writing of approval or deficiencies in the Work Plan.
 - 6). 301 EWS, or its designee, shall respond in writing to the Department within thirty (30) days to the Department's comments with regards to deficiencies.
 - 7). 301 EWS shall implement the Work Plan upon written approval of the Work Plan from the Department.
 - 8). 301 EWS shall inform the Department at least five (5) working days in advance

of all field activities conducted pursuant to the Work Plan, and shall allow the Department, or its authorized representatives, to take duplicates of any samples if desired.

- 9). 301 EWS shall preserve items not referenced in the Phase I that may: 1) provide evidence of a Potentially Responsible Party's involvement at the Site; 2) lead to the discovery of other areas of contamination at the Site; or 3) contain environmental information related to the Site. Such items may include drums, bottles, labels, business and operating records, contracts, Site studies, investigations, and other physical or written materials relating to the Site. 301 EWS shall notify the Department of the location of any such items, and provide the Department with an opportunity to inspect any materials or copy any documents at the Department's expense prior to destruction or disposal of said items.

B. Assess Waste Materials and Segregated Sources:

- 1). 301 EWS shall assess Waste Materials and Segregated Sources upon their discovery on the Property at any time during assessment, corrective action, or development activities.
- 2). 301 EWS's assessment of Waste Materials and Segregated Sources shall include characterization of the contaminant concentrations, and an estimation of the quantity or extent of each type of Waste Material or Segregated Source, as applicable.
- 3). 301 EWS shall expeditiously stabilize or remove from the Property any Segregated Source that has not yet released all contents to the environment upon discovery.
- 4). 301 EWS shall notify the Department if a release of Contamination occurs as a result of its assessment, stabilization or removal actions. 301 EWS shall assess the impact of the release and take necessary action in accordance with a Department approved plan.

C. Assess groundwater quality:

- 1). 301 EWS shall assess groundwater quality and the groundwater flow direction across the Property. Assessment shall include samples from a minimum of three monitoring wells installed to bracket the water table. The wells shall be of sufficient construction to allow collection of measurements and suitable samples for the analytical parameters specified below. The wells shall be located as follows:
 - a). One well at a presumed upgradient location near the southern-most Property boundary and East Pearl Street, and;
 - b). Two wells at presumed downgradient locations along the Property boundary bordering East Wood and Cummings Streets.
- 2). Samples from all monitoring wells shall be analyzed for TAL- Metals, VOCs and SVOCs. In addition, one downgradient well shall be analyzed for the full TAL/TCL parameters.
- 3). Groundwater elevation in each well shall be determined.
- 4). Groundwater quality results shall be compared to standards in the South Carolina State Primary Drinking Water Regulations, R.61-58, and to the Regional Screening Tables values for "Tapwater", if not specified in R.61-58.
- 5). 301 EWS shall abandon the monitoring wells after collection of measurements and samples. The wells shall be abandoned in accordance with the Well Standards.

D. Document the extent of Fill Materials:

- 1). During installation of the three groundwater monitoring wells enumerated above, 301 EWS shall assess the vertical extent of Fill Material, if any, at each of the groundwater monitoring well locations.
- 2). 301 EWS shall incorporate all lithologic data, including any previous geotechnical findings in its possession, into its final report on the Property.
- 3). For purposes of this determination, "Fill Material" means soils, silt, land-clearing debris, hardened concrete, hardened/cured asphalt, bricks, blocks, glass,

rubber and other similar materials not native to the Property in place on or in the Property to some depth below the existing ground surface.

E. Evaluate and control potential impacts to indoor air:

- 1). 301 EWS shall evaluate potential impacts to indoor air if the Department determines significant concentrations of volatile organic compounds are present in the subsurface. The Department will use a modified Johnson and Ettinger Model to determine "Significant concentrations" based on representative soil and/or groundwater quality results reflective of the Property. The model will be constrained towards predicting commercial exposures consistent with the building construction proposed to be used on the Property.
- 2). 301 EWS's evaluation shall, unless otherwise agreed to by the Department, consist of collection and analysis of a minimum of four soil gas samples from the proposed footprint of the building to be constructed on the site over areas potentially subject to Vapor Intrusion. Soil gas samples shall be analyzed for all site related volatile compounds by appropriate methods capable of detecting soil gas concentrations at screening levels indicative of a 10^{-6} risk for shallow gas samples (using an attenuation factor appropriate for the depth of the samples). The applicable screening concentrations shall be based upon the EPA OSWER "Draft Guidance for Evaluating the Vapor Intrusion to Indoor Air Pathway from Groundwater and Soils" or supplemental EPA guidance.
- 3). The Department may allow 301 EWS to implement Vapor Intrusion control measures in lieu of the above evaluation, or use alternative evaluation methods that, in the Department's sole discretion, offer a similar degree of data usability.
- 4). 301 EWS shall submit an addendum to the Work Plan detailing the steps for further study and/or remedial or other control management measures to be implemented if the predicted indoor air concentration exceeds a 10^{-6} risk calculated for occupational exposure (40 hrs/wk, 50 wk/yr, 25 yrs). The Department shall give reasonable consideration of data or other demonstration that shows unacceptable exposures inside the building do not result from the subsurface conditions.

F. Institute reasonable contamination control measures:

- 1). 301 EWS shall take reasonable measures to limit or prevent human exposure to Existing Contamination on the Property:
 - a). Measures shall be required for Waste Materials and contaminated media with concentrations in excess of appropriate human-health risk-based exposure standards via plausibly complete routes of exposure. The measures may include removal, encapsulation, barriers, or other methods reasonably expected to limit human exposures to the contamination.
 - i. The measures shall be approved by the Department prior to implementation, and shall be consistent with the intended future use of the Property.
 - ii. 301 EWS shall provide appropriate documentation to demonstrate satisfactory completion of the control measures for Department review and approval prior to obtaining a Certificate of Completion.
 - b). 301 EWS shall remove from the Property any Segregated Sources of Contamination that have not yet released all contents to the environment.
 - i. The contents of the Segregated Sources shall be properly reused or disposed of in accordance with regulations.
 - ii. 301 EWS shall document the characterization and ultimate disposition of the materials to the Department within sixty (60) days of removal of any material from the Property.

G. Monitor groundwater quality:

- 1). 301 EWS shall install up to three (3) permanent groundwater monitoring wells substantially equivalent to any monitoring well abandoned in Paragraph 4.C.5, above, if the Department determines a groundwater-monitoring program is required. The requirement for a groundwater-monitoring program will be based on the Department's determination of potential adverse effects on nearby receptors, i.e., individuals that are presently or potentially exposed to contamination.

- 2). 301 EWS may seek an amendment of this Contract to clarify any responsibilities it may have to facilitate continued monitoring and to identify the entities to be involved in monitoring, duration of the monitoring, sampling frequency or any other aspect of a monitoring program to which it may have an interest.
- 3). The Department shall not require 301 EWS to install any monitoring wells pursuant to this Paragraph if a Certificate of Completion has been issued on the Property pursuant to this Contract.

HEALTH AND SAFETY PLAN

5. 301 EWS shall prepare and submit under separate cover from the Work Plan, a Health and Safety Plan consistent with Occupational Safety and Health Administration regulations. 301 EWS agrees that the Health and Safety plan is submitted to the Department only for informational purposes. The Department expressly disclaims any liability that may result from implementation of the Health and Safety Plan by 301 EWS.

PUBLIC PARTICIPATION

6. 301 EWS and the Department will foster public participation to implement this Contract as follows:
 - A. The Department will provide notice and opportunity for public comment and initiate a thirty (30) day claim contribution notification period in accordance with established procedures consistent with S.C. statutes upon signature of this Contract by 301 EWS.
 - B. 301 EWS shall erect a sign at major entrances onto the Property. The sign shall be erected within one day of the Department's public announcement about the Contract in a newspaper of general circulation in the community.
 - 1). The sign will state "Voluntary Cleanup Project by 301 E. Wood Street, LLC under Voluntary Cleanup Contract 10-5831-NRP with the South Carolina

Department of Health and Environmental Control." The sign shall provide a brief description of the scope of activities under the Contract, and contact information, including telephone number and address, for a representative of 301 EWS. Contact information for the Department shall state "TOLL-FREE TELEPHONE: 1-866-576-3432".

- 2). All sign lettering must be of sufficient size to be legible with un-aided normal eyesight from the point where the public will normally pass by the Property without intruding onto the Property.
- 3). 301 EWS shall submit photographs of the sign and a Property drawing showing the location of the sign. The photographs shall be submitted to the Department within 10 days of erecting the sign.
- 4). 301 EWS agrees to revise the sign if the Department determines the sign is inaccurate, not legible, or otherwise ineffectively placed.
- 5). 301 EWS shall maintain the sign in legible condition and at visible locations throughout the duration of the Contract and until a Certificate of Completion is issued.
- 6). The sign(s) may be removed to accommodate building or grading activities; however, 301 EWS shall within two days restore the sign to its original location or move it to another publicly accessible location upon notice to the Department.

PROGRESS UPDATES

7. 301 EWS shall submit periodic written updates to the Department's project manager until such time as all activities are complete pursuant to this Contract. The first update shall be due within ninety days of Work Plan approval and semi-annually thereafter.
 - A. The updates may be in summary letter format, but should include information about:
 - 1). The actions taken under this Contract during the previous reporting period;
 - 2). Actions scheduled to be taken in the next reporting period;
 - 3). Sampling, test results, and any other data in summary form, generated during the previous reporting period related to the Property regardless of whether the

data was collected pursuant to this Contract; and,

- 4). A description of any environmental problems experienced at the Property during the previous reporting period and the actions taken to resolve the problems.

- B. The Department's project manager may allow an extended schedule between updates based on site-specific conditions.

SCHEDULE

8. 301 EWS shall perform all activities and response actions pursuant to this Contract in an expeditious manner. In the event that circumstances dictate a delay in implementation of the response actions, the Department may require implementation of interim measures to stabilize the Contamination or prevent unacceptable exposures. 301 EWS shall implement the interim measures in accordance with a Department-approved plan.

DECLARATION OF COVENANTS AND RESTRICTIONS

9. 301 EWS or its Beneficiaries shall execute, and record, a Declaration of Covenants and Restrictions (Covenant) for the Property. At a minimum, the Covenant shall prohibit drinking water use of groundwater collected from the Property and shall require buildings, pavement, or ornamental planting beds cover the Property except during construction activities. The Covenant may include additional requirements to minimize human exposures if contamination exceeds residential standards after completing the response actions pursuant to this Contract. The recorded Covenant shall be incorporated into this contract as an Appendix and shall be implemented as follows:

- A. The Department shall prepare and sign the Covenant prior to providing it to 301 EWS. An authorized representative of 301 EWS or its Beneficiaries shall sign the Covenant within ten days of receipt. All signatures shall be witnessed, and signed and sealed by a notary public.

- B. 301 EWS or its Beneficiaries shall record the executed Covenant with the Registrar

of Deeds for Spartanburg County.

- C. 301 EWS or its Beneficiaries shall provide a copy of the recorded Covenant to the Department within sixty days of the Department's execution. The copy shall show the date of recordation and Book and Page number where the Covenant was recorded.
- D. In the event that Contamination exceeds residential standards on a portion of the Property, 301 EWS or its Beneficiaries may create a new parcel that will be subject to the Covenant.
- E. The Covenant shall reserve a right of entry and inspection for 301 EWS or its Beneficiaries that may be transferred to another single individual or entity for purposes of compliance monitoring.
 - 1). 301 EWS or its Beneficiaries shall ensure that the restrictions established by the Covenant remain on any subdivided property.
 - 2). 301 EWS or its Beneficiaries shall identify a single point of contact responsible for documenting current land use and compliance with the Covenant. 301 EWS or its Beneficiaries shall have a continuing obligation to inform the Department of the single point of contact until such time as the Department releases the Covenant
- F. 301 EWS or its Beneficiaries, or the individual or entity responsible for compliance monitoring, shall annually respond to the Department with information on the Property's land use and compliance with the Covenant. The response shall be submitted annually May 31st in a manner and form prescribed by the Department.
- G. The Department may require 301 EWS or its Beneficiaries, as owners of the Property and to the extent allowed under law, to amend the Covenant in response to significant changes in law, completion of remedial actions meeting the applicable standards in effect at the time, or if other circumstances of the Site change;

however, said amendment shall not be applied retroactively unless expressly provided for in the enabling legislation. An amendment may strengthen, relax, or remove restrictions based on the Regional Screening Tables in effect at that time; however, the Department shall not impose a more restrictive condition based solely on changes in the Regional Screening Tables. An amendment shall be duly executed and recorded with Spartanburg County using procedures similar to those detailed above.

NOTIFICATION

10. All notices required to be given by either party to the other shall be in writing. Each party shall have a continuing obligation to identify a contact person, whose name, address, and telephone number must be updated to the other party until a Certificate of Completion has been issued. Notices by electronic mail or facsimile shall be acceptable if acknowledged in writing by the recipient; with the delivery date being the date of acknowledgment or earlier date if stated in the acknowledgment. Notices shall otherwise be deemed sufficiently given if delivered at the address shown below, or at such place or to such agent as the parties may from time to time designate in writing, by: 1) regular U.S. Mail, in which event notice shall be deemed to occur seven (7) days after the postmark date; 2) Certified or Registered Mail; 3) Commercial delivery service company, in which case notice shall be deemed to occur on the date shown on the delivery receipt; or, 4) hand delivery to the other party.

A. All correspondence and notices to the Department including two hardcopies of all Work Plans and reports, and one hardcopy of the Health and Safety Plan should be submitted to:

Craig V. Dukes
Bureau of Land and Waste Management
2600 Bull Street
Columbia, South Carolina 29201

B. All correspondence and notices to 301 EWS shall be submitted to 301 EWS's

designated contact person, who as of the effective date of this contract shall be:

T. Michael Kelly
PO Box 1055
Winston-Salem NC 27102

FINANCIAL REIMBURSEMENT

11. 301 EWS or its Beneficiaries shall reimburse the Department for its public participation costs and for oversight costs of activities specific to this Contract as provided by S.C. statutes. The oversight costs shall include the direct and indirect costs incurred by the Department in implementing the Voluntary Cleanup Program as related to this Contract, and any future amendments thereto, and may include costs related to this Contract incurred by the Department prior to execution of this Contract. Invoices for oversight costs will be sent to 301 EWS on a quarterly basis. All costs are payable within thirty (30) days of the Department's invoice submitted to:

T. Michael Kelly
PO Box 1055
Winston-Salem NC 27102

ACCESS TO THE PROPERTY

12. 301 EWS agrees the Department has an irrevocable right of access to the Property for environmental response matters after 301 EWS acquires the Property. This right of access remains until such time as remediation is accomplished for unrestricted use and monitoring is no longer required.

A. Under this right of access, the Department, its authorized officers, employees, representatives, and other persons performing non-intrusive response actions under the Department's oversight ("Departmental Representatives") will not be denied access to the Property during normal business hours or at any time work under this Contract is being performed or during any environmental emergency or imminent threat situation, as determined by the Department (or as allowed by applicable law).

B. Until a Certificate of Completion is issued, 301 EWS shall make reasonable efforts

to ensure that a copy of this Contract is provided to any lessee, successor or subsequent owner of the Property.

- C. 301 EWS may require Departmental Representatives to observe reasonable safety and security procedures established by 301 EWS or its contractors.

CERTIFICATE OF COMPLETION AND COVENANT NOT TO SUE

13. A Certificate of Completion shall be issued to 301 EWS or its Beneficiaries as follows:

- A. 301 EWS shall request a Certificate of Completion after the response actions are completed and any required Covenants are recorded pursuant to this Contract. The request shall be in writing and shall report 1) the amount of soil that was removed or remediated on the Property; and 2) the cost of all environmental work conducted pursuant to this Contract.
- B. The Department shall issue the Certificate of Completion with its covenant not to sue for Existing Contamination upon determining that 301 EWS has successfully and completely complied with the Contract.
- C. The Department may issue a Provisional Certificate of Completion if the substantive response actions pursuant to this Contract are complete but all actions under the Contract cannot be completed due to site-specific circumstances.
 - 1). A Provisional Certificate of Completion will include specific performance standards that 301 EWS or its Beneficiaries shall continue to meet.
 - 2). The Provisional Certificate of Completion may include the Department's covenant not to sue for Existing Contamination; however, said covenant shall be automatically revoked if 301 EWS or its Beneficiaries do not satisfactorily complete the requirements of the Contract as stipulated in the Provisional Certificate of Completion.

ECONOMIC BENEFITS REPORTING

14. 301 EWS or its Beneficiaries shall report information to the Department that

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demonstrates that the activities pursuant to this Contract have been beneficial to the State and community. The report shall be submitted within two (2) years after the execution date of this Contract, and annually thereafter until two years after redevelopment of the Property is complete. 301 EWS shall summarize the new operations at the Property, the number of jobs created, the amount of increase to the tax base, and the total amount invested in the Property for property acquisition and capital improvements.

TRANSFER OF CONTRACT

15. The terms and conditions of this Contract apply to and inure to the benefit of the Department, 301 EWS, and its Beneficiaries. The following stipulations apply to ensure the transition of all responsibilities and benefits to successive Beneficiaries for any portion of the Property:

- A. 301 EWS or its Beneficiaries shall provide a copy of this Contract and applicable Appendices to any subsequent Beneficiary. Transmittal of the Contract copy may be via any commonly accepted mechanism.
- B. If the Certificate of Completion has not been issued, 301 EWS or its Beneficiaries shall request approval from the Department prior to assigning or transferring the protections and obligations of this Contract to a new individual or entity. The protections shall not inure to an individual or entity without the Department's approval. The Department shall not unreasonably withhold its approval upon receipt of documentation from the new individual or entity showing it:
 - 1). Is eligible to be a Bona Fide Prospective Purchaser for the Property;
 - 2). Has sufficient resources to complete the activities of this Contract;
 - 3). Will not use the Property for activities that are inconsistent with the terms and conditions of this Contract;
 - 4). Will assume the protections and all obligations of this Contract and,
 - 5). Will, in the Department's sole discretion, provide a measurable benefit to the State and the community as a result of this transfer.

C. If the Certificate of Completion has been issued and the portion of the Property is subject to a Covenant or other ongoing obligation pursuant to this Contract, 301 EWS or its Beneficiaries shall provide written notification to the Department identifying the new individual or entity within thirty (30) days after the effective date of the ownership change or other possessory transfer of the Property.

- 1). The notification shall include a signed statement from the new individual or entity that its use of the Property will remain consistent with the terms of the Contract, and that it will assume the protections and ongoing obligations of this Contract.
- 2). This requirement is waived for an individual or entity acquiring a portion of the Property for individual residential use provided the Covenant is recorded on the master deed for the residential development, and the Department has approved the procedure for a single point of contact responsible for documenting current land use and compliance with the Covenant.

D. If a Certificate of Completion has been issued and the Property is not subject to a Covenant or other continued obligation pursuant to this Contract, no notification is required.

CONTRACT TERMINATION

16. 301 EWS, its Beneficiaries, and the Department each reserve the right to unilaterally terminate this Contract by giving thirty (30) days advance written notice to the other party. Termination shall be subject to the following:

A. The Department may not terminate this Contract without cause and before termination shall allow 301 EWS or its Beneficiaries an opportunity to correct cause(s) of termination, which may include, but is not limited to, the following:

- 1). Failure to complete the terms of this Contract;
- 2). Change in 301 EWS's or its Beneficiaries' business activities on the Property or use of the Property that are inconsistent with the terms and conditions of this Contract;

- 3). Failure to submit timely payment for costs upon receipt of the Department's invoice;
 - 4). Failure of 301 EWS or its Beneficiaries to implement appropriate response actions for additional Contamination or releases caused by 301 EWS or its Beneficiaries;
 - 5). Knowingly providing the Department with false or incomplete information, or knowing failure to disclose material information;
 - 6). Failure by 301 EWS or its Beneficiaries to obtain the applicable permits from the Department for the response actions or other activities undertaken at the Property pursuant to this Contract; or,
 - 7). Failure by 301 EWS or its Beneficiaries to make material progress toward the expansion, redevelopment, or reuse of the Property as determined by the Department upon consideration of 301 EWS's or its Beneficiaries' development efforts, regional economic conditions, and other pertinent information related to 301 EWS or the Property.
- B. Should 301 EWS or its Beneficiaries elect to terminate, that party shall certify to the Department's satisfaction that any environmental or physical hazards created by 301 EWS or its Beneficiaries have been stabilized or mitigated such that the Property does not pose a significant threat to human health or the environment that did not exist before the response actions identified in this Contract.
- C. Termination of this Contract by any party does not end the obligations of 301 EWS or its Beneficiaries to pay costs incurred by the Department pursuant to this Contract prior to the date that any such termination takes effect. Payment for such costs shall become immediately due.
- D. Upon termination, the protections provided under this Contract shall be null and void as to any party who willfully or intentionally participated in actions giving rise to termination of the Contract. This shall apply to that party's lenders, parents, subsidiaries, members, managers, employees, assigns, and successors, including

lessees, heirs, devisees, and other parties taking an interest in the Property through that party. The protections will continue for any other covered party who did not willfully or intentionally participate in the action giving rise to the termination.

ENTITLEMENT OF PROTECTIONS AND BENEFITS

17. 301 EWS and its Beneficiaries shall be granted the protections and benefits provided by S.C. statutes as follows:

- A. Effective on the date this Contract is first executed by the Department:
 - 1). Protection from contribution claims as defined in State Statutes.
 - 2). Protection from third-party claims as provided by S.C. Code Ann. § 44-56-750(H).
 - 3). Eligibility to file annual application for Voluntary Cleanup Activity Tax Credits pursuant to S.C Code § 12-6-3550.
- B. Effective on the date the Certificate of Completion is issued by the Department:
 - 1). The Department's covenant not to sue 301 EWS and its Beneficiaries for Existing Contamination except for releases and consequences caused by 301 EWS or its Beneficiaries.
 - 2). Specific tax credits or additional benefits expressly contingent in S.C. statutes on issuance of the Certificate of Completion.
- C. These Protections and Benefits do not apply to any contamination, releases, and consequences caused by 301 EWS and its Beneficiaries. The Department retains all rights under State and Federal laws to compel 301 EWS and its Beneficiaries to perform or pay for response action related to releases or consequences created by 301 EWS or its Beneficiaries.

RESERVATION OF RIGHTS BY THE DEPARTMENT

18. Nothing in this Contract is intended to be, nor shall be construed as, a release or covenant not to sue for any claim or cause of action, past or future, that the

Department may have against any person, firm, or corporation other than 301 EWS and its Beneficiaries. The Department reserves the right to undertake future response actions at the Site and to seek to compel parties, other than 301 EWS and its Beneficiaries, to perform or pay for response actions at the Site. Nothing in this Contract shall in any way restrict or limit the nature or scope of response actions that may be taken or be required by the Department in exercising its authority under State and Federal law.

RESERVATION OF RIGHTS BY 301 EWS

19. 301 EWS retains all rights to assert claims in law or equity against any person, company, or entity with respect to the Property, except as limited elsewhere by this Contract. 301 EWS specifically deny responsibility for response costs or damages resulting from Existing Contamination; however, 301 EWS agree to undertake the requirements of this Contract.

BURDEN OF PROOF

20. 301 EWS and its Beneficiaries shall have the continuing obligation to demonstrate that any newly discovered Contamination is not attributable to 301 EWS or its Beneficiaries. 301 EWS and its Beneficiaries shall make this demonstration to the Department's satisfaction in accordance with State or Federal Law applicable to such newly discovered Contamination. For purposes of this clause, newly discovered Contamination means finding types of Contamination not previously identified at the Site or substantially higher concentrations of Existing Contamination.

LIMITATION OF CLAIMS BY 301 EWS AND ITS BENEFICIARIES

21. In consideration of the protections from the Department under this Contract, 301 EWS and its Beneficiaries agree not to assert any claims or causes of action against the Department or to seek other costs, damages, or attorney's fees from the Department arising out of activities undertaken at the Property. This limitation shall not extend to any claims or causes of action resulting from the Department's intentional or grossly negligent acts or omissions, or the Department's willful violation of the terms of this agreement.

SIGNATORS

22. The signatories below hereby represent that they are authorized to and do enter into this Contract on behalf of their respective parties.

**THE SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL
CONTROL**

BY: _____
Daphne G. Neel, Chief
Bureau of Land and Waste Management

DATE: _____

Approved by Office of General Counsel

DATE: _____

301 E. Wood Street, LLC,

BY: _____

DATE: 3-20-10

Printed Name and Title

Michael Kelley